

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

EASTERN CONTRACTORS, INC.,

Plaintiff,

v.

CITY OF WORCESTER and THOMAS  
R. HOOVER, City Manager, and HEERY  
INTERNATIONAL, INC. and THOMAS A.  
ELLIS,

Defendants.

Civil Action No.

**03 CV 12216 MLW**

**NOTICE OF REMOVAL  
PURSUANT TO  
28 U.S.C. § 1441**

MAGISTRATE JUDGE Alexander

5/639  
AMOUNT \$ 157  
SUMMONS ISSUED 11/17  
LOCAL RULE 4.1 1  
WAIVER FORM 1  
MCF ISSUED 1  
BY DPTY. CLK. F. C. 104  
DATE 11-12-03

**TO: CLERK OF COURT, UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS AND ALL COUNSEL OF RECORD**

Pursuant to 28 U.S.C. § 1441(a), the defendants, Heery International, Inc. and Thomas A. Ellis (collectively, "Heery") hereby give notice of removal of this action from the Massachusetts Superior Court in Middlesex County (Docket No. MICV2003-01422), where it is now pending, to the United States District Court for the District of Massachusetts. In support of this Notice of Removal, the defendants state as follows:

1. On October 9, 2003, Heery was served with a copy of the Amended Verified Complaint. A true and accurate copy of the Amended Verified Complaint with the returns of service is attached as Exhibit A.
2. This Notice is filed pursuant to 28 U.S.C. § 1441 on the grounds that the plaintiff's suit involves claims of which the district courts of the United States have original jurisdiction and claims founded on a claim or right arising under the Constitution, treaties or laws of the United States. 28 U.S.C. §1441.
3. Specifically, the plaintiff's claims asserted against Heery arise under 42

U.S.C. §§ 1981, 1983, and 1985. The plaintiff has alleged in the Amended Verified Complaint that Heery violated the laws of the United States by: (1) interfering with the plaintiff's right to make and enforce contracts in violation of 42 U.S.C. §§ 1981; (2) depriving the plaintiff of equal protection guaranteed by the Constitution of the United States based on the plaintiff's race in violation of 42 U.S.C. §§ 1983; and, (3) conspiring with the co-defendant, City of Worcester, to deprive the plaintiff of equal protection guaranteed by the Constitution of the United States based on the plaintiff's race in violation of 42 U.S.C. §§ 1985.

4. The plaintiff has also asserted claims against the City of Worcester and Thomas R. Hoover alleging that the City and Hoover violated the laws and Constitution of the United States by: (1) interfering with the plaintiff's right to make and enforce contracts in violation of 42 U.S.C. §§ 1981; (2) depriving the plaintiff of equal protection guaranteed by the Constitution of the United States based on the plaintiff's race in violation of 42 U.S.C. §§ 1983 and the Fourteenth Amendment.; (3) conspiring with Heery to deprive the plaintiff of equal protection guaranteed by the Constitution of the United States based on the plaintiff's race in violation of 42 U.S.C. §§ 1985; (4) retaliating against the plaintiffs in violation of the First and Fourteenth Amendments because the plaintiffs had previously sued the City; and, (5) depriving the plaintiff of its property without due process in violation of the Fourteenth Amendment.

5. This removal is timely under 28 U.S.C. § 1446(b) as it was filed within thirty (30) days of receipt by Heery through service or otherwise of the initial pleading setting forth the plaintiff's claims for relief against Heery upon which this action is based.

6. Pursuant to 28 U.S.C. § 1441(a), the United States District Court for the

District of Massachusetts is the federal district court for the district embracing the place where the state court is pending.

WHEREFORE, Heery hereby removes the above-captioned action from the Massachusetts Superior Court to the United States District Court for the District of Massachusetts.

Respectfully Submitted,  
HEERY INTERNATIONAL, INC. and  
THOMAS A. ELLIS,

By their attorneys,



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Matthew M. O'Leary BBO # 652033  
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Dated: November 10, 2003  
00789593

**CERTIFICATE OF SERVICE**

I, Matthew M. O'Leary, hereby certify that on this 10<sup>th</sup> day of November, 2003, I served a copy of the foregoing on all counsel of record by first class mail, postage prepaid.



Matthew M. O'Leary